

**BOARD OF ENVIRONMENTAL PROTECTION**  
**Meeting Minutes**

September 3, 2009

A meeting of the Board of Environmental Protection was held on Thursday, September 3, 2009 at the Holiday Inn / Ground Round, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

**Board:** Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Frank Woodard.

Absent: Nancy Ziegler

**Staff:** Malcolm Burson, Office of the Commissioner  
Matt Sica, Dept. of Health and Human Services  
John McPhedran, Bureau of Land and Water Quality  
Robert Stratton, Bureau of Land and Water Quality  
Gary Fish, Maine Board of Pesticides Control

**Others:** Jan McClintock, Assistant Attorney General (for HoltraChem matter only)  
Nancy Macirowski, Assistant Attorney General  
Cindy Bertocci, BEP Executive Analyst  
Terry Hanson, BEP Administrative Assistant

***(Meeting adjourned at approximately 12:00 p.m.)***

**I. Regular Agenda**

UNITED STATES SURGICAL CORP. - MALLINCKRODT LLC // HOLTRACHEM site  
(appeal of the Sixth Procedural Order)

The Board voted (8-0-1-1) on a motion to deny Mallinckrodt's appeal of Section 2, Remedy Selection Criteria of the Sixth Procedural Order in the matter of the Commissioner's Designation of Uncontrolled Hazardous Substance Site and Order for the HoltraChem site, and affirm the Sixth Procedural Order dated August 28, 2009.

The votes were taken pursuant to 38 M.R.S.A. § 1361 1371 and the Maine Administrative Procedure Act.

*Board members Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Frank Woodard voted to support the motion. Board member M. Wind Goodale recused. Board member Nancy Ziegler was absent.*

**I. DEPARTMENTAL**

**A. COMMISSIONER'S COMMENTS: NONE**

**B. COMMENTS FROM THE BEP CHAIR: NONE**

**C. EXECUTIVE ANALYST COMMENTS:**

Mallinckrodt: The Commissioner's Order concerning HoltraChem and supporting documents will be distributed to Board members today. The next pre-hearing conference with the parties will be held on Friday, September 11, 2009.

**D. BOARD CALENDAR: Reviewed.**

**E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING: None**

**F. EXECUTIVE SESSION: None**

**II CONSENT AGENDA ITEMS:**

The Board voted (9-0-0-1) on a motion to approve consent agenda items 1, 2, 3 and 4 as presented.

The vote was taken pursuant to 38 M.R.S. A. §341-D(6).

*Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lisa Widoff, and Frank Woodard voted to support the motion. Board member Nancy Ziegler was absent.*

1. WAL-MART REAL ESTATE BUSINESS TRUST, WALL-MART STORES, INC. and RL SPENCER INC., Bangor – Administrative Consent Agreement (BLWQ – Land)
2. REG BAUER and SURVEYWORKS, INC., Leeds – Administrative Consent Agreement (BLWQ – Land)
3. PROCK MARINE COMPANY, Bristol – Administrative Consent Agreement (BLWQ – Land)
4. MAIETTA ENTERPRISES, INC., West Baldwin – Administrative Consent Agreement (BAQ)

### III. Regular Agenda

1. CHAPTER 263, COMPREHENSIVE AND LIMITED ENVIRONMENTAL LABORATORY CERTIFICATION RULES // Repeal and Replace (post to hearing)

Staff: Malcolm Burson, Office of the Commissioner  
Matt Sica, Dept. of Health and Human Services

The Board voted (9-0-0-1) on a motion to post to hearing the repeal and replacement of Chapter 263, Comprehensive and Limited Environmental Laboratory Certification Rules. Changes to these rules update and include new definitions for consistency in use of terminology, incorporate policies and national standards, require laboratories to perform one proficiency test per year, include modifications to on-site inspections and general reorganization of the rule. The motion included an amendment to include the definition of Mobile Laboratories to Section 1: Definitions (detailed below). An October 1, 2009 hearing date is anticipated and the Board established October 13, 2009 as the deadline for receipt of written public comments

**Section 1. Definitions -- Mobile Laboratories:**

1. Portable enclosed structure within which testing or analysis of environmental samples occurs;
2. Examples include trailers, vans, skid mounted structures configured to house environmental testing equipment and personnel.

The vote was taken pursuant to 38 M.R.S.A. §341-D(1-B) and 22 M.R.S.A. §567.

*Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lisa Widoff, and Frank Woodard voted to support the motion. Board member Nancy Ziegler was absent.*

2. DEPARTMENT OF ENVIRONMENTAL PROTECTION GENERAL PERMIT #W-009047-5U-A-N (briefing -- tentatively scheduled in the event of an appeal)

Staff: John McPhedran, Bureau of Land and Water Quality

The Board received a staff briefing on the Eurasian Milfoil plant infestation in outlet cove (approximately 6 acres) of Salmon Lake (700 acre body of water). Following implementation of the Department's "rapid response plan for invasive aquatic plants, fish and other fauna" (hand removal of 325 plants and installation of benthic barriers), it was determined that the plant was still thriving and multiplying.

Staff provided an overview of the regulatory process and explained that evaluation of an application to use herbicides requires documentation related to non-chemical treatment approaches, a demonstration that there exists a need to control a target species through chemical treatment, and that the desired method does not harm non-target species. Additionally, factors considered during the review of the application were the value of the habitat and impacts or risk to habitat, and the limited success from non-chemical methods of eradication. The permit was approved. Lastly, quarterly reports to the Department will monitor for water quality, impact to non-target species and compliance with the General Permit.

The Department plans to apply the herbicide on Thursday, September 10<sup>th</sup>. Since the plant is still in its growing season, application of the herbicide is expected to be taken up by the root system and destroy the plant.

*Next Regular Meeting –Thursday, September 17, 2009 – Holiday Inn/Ground Round*